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NORTHERN DISTRICT OF CALIFORNIA

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**UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF CALIFORNIA**

ROHNERT PARK CITIZENS TO
ENFORCE CEQA, and DOES 1 through 5,
inclusive,

Plaintiff,

v.

CALIFORNIA DEPARTMENT OF
TRANSPORTATION, UNITED STATES
DEPARTMENT OF TRANSPORTATION,
FEDERAL HIGHWAY ADMINISTRATION,
and DOES 6 through 10, inclusive,

Defendants.

C 07 4607
CASE NUMBER

**COMPLAINT FOR
DECLARATORY, MANDAMUS,
AND INJUNCTIVE RELIEF FOR
VIOLATIONS OF THE NATIONAL
ENVIRONMENTAL POLICY ACT,
ADMINISTRATIVE PROCEDURE
ACT, THE CALIFORNIA
ENVIRONMENTAL QUALITY ACT,
AND THE CALIFORNIA PUBLIC
RECORDS ACT**

BY FAX

TEH

1 Plaintiff alleges:

2 I. INTRODUCTION

3 1. Plaintiff Rohnert Park Citizens to Enforce CEQA (RPCEC) brings this
4 mandamus action challenging the California Department of Transportation's
5 (Caltrans) processing and alleged approval of the Wilfred Avenue Interchange
6 Project (the project) in violation of the California Environmental Quality Act
7 (CEQA) and, as an agency of the Federal Department of Transportation (DOT),
8 the Federal Highway Administration's (FHWA) processing and approval of the
9 project in violation of the National Environmental Policy Act (NEPA) and the
10 Administrative Procedure Act (APA). The project proposes to modify the
11 interchange to connect Wilfred Avenue to Golf Course Drive by an undercrossing
12 and widen and realign Route 101 for HOV lanes from the Rohnert Park
13 Expressway Overcrossing to the Santa Rosa Avenue Overcrossing.

14 The DOT and FHWA failed to recirculate the FONSI or prepare an
15 environmental impact statement (EIS) or a supplement to the FONSI or a
16 supplemental EIS (SEIS) based on significant new circumstances or information
17 relevant to environmental concerns that bear on the proposed action and its
18 impacts. Caltrans failed to prepare an EIR or recirculate the negative declaration
19 after significant new information became known or conduct subsequent or
20 supplemental environmental review based on substantial changes to the project
21 and/or substantial changes with respect to the circumstances under which the
22 project is being undertaken and/or new significant information, which was not
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1 known and could not have been known at the time the negative declaration was
2 adopted.
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4 Caltrans further violated the California Public Records Act (PRA) by
5 improperly and without justification withholding certain non-exempt and non-
6 privileged public records from plaintiff and plaintiff's members and representatives,
7 who are members of the public, thereby causing plaintiff great harm.
8

9 Among other relief prayed for below, plaintiff requests a peremptory writ of
10 mandate in the first instance ordering the DOT and the FHWA and Caltrans to set
11 aside and void their respective actions related to the project and to commence
12 new proceedings only upon compliance with NEPA, the APA, CEQA, the PRA,
13 and all other applicable laws prior to further consideration of the project.
14

15 II. JURISDICTION AND VENUE

16 2. This Court has jurisdiction over this proceeding pursuant to Sections
17 1331 and 1361 of Title 28 of the U.S. Code, because this pleading alleges
18 violations of NEPA and the APA, both federal laws, and seeks to compel the DOT
19 and the FHWA to perform duties owed to plaintiff, its members, and other
20 members of the public. The Court also has jurisdiction over this proceeding
21 pursuant to Section 701 *et seq.* of Title 5 of the U.S. Code, because the pleading
22 seeks judicial review of action taken by one or more agencies of the United
23 States. Further, the Court has jurisdiction over this proceeding pursuant to
24 Section 2201 of Title 28 of the U.S. Code, because plaintiff seeks declaratory
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1 relief against the DOT and the FHWA. This Court has pendent jurisdiction over
2 the state CEQA and PRA claims joined with the federal NEPA claim.

3 3. Venue is proper in this Court under Section 1391(e) of Title 28 of the
4 U.S. Code, because both a substantial part of the events or omissions giving rise
5 to this proceeding were committed in this judicial district and a substantial part of
6 the property at issue in this proceeding is located in this judicial district.
7

8 4. Plaintiff has satisfied each and every exhaustion of remedies
9 requirement that must be satisfied in order to maintain this proceeding.

10 Alternatively, no exhaustion of remedies requirement may be applied to plaintiff.
11

12 **III. PARTIES**

13 5. Plaintiff RPCEC is a unincorporated association which purposes include
14 protecting and preserving environmental resources in Southern Sonoma County
15 including the City of Rohnert Park and its environs. RPCEC is composed of
16 persons whose interests will be severely injured if the approvals are not set aside
17 pending further review on the project in full compliance with NEPA, the APA,
18 CEQA, the PRA, and all other environmental laws. The members of RPCEC
19 utilize and enjoy Sonoma County's and the State's environmental resources and
20 RPCEC brings this petition on behalf of all others similarly situated who are too
21 numerous to be named and brought before this Court as plaintiffs. As an
22 organization composed of residents and property owners within Sonoma County,
23 RPCEC is within the class of persons beneficially interested in, and aggrieved by,
24 the acts of defendants as alleged below and fully participated in the administrative
25 processes related to the project. An injury-in-fact will occur as a result of the
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1 DOT's and the FHWA's actions and this injury can be redressed by the judicial
2 remedy requested herein. RPCEC is asserting its own legal interests within the
3 zone of environmental interests and not solely for economic interests. RPCEC
4 and/or its members will be directly affected by the project and has a beneficial
5 right and interest in the DOT's and the FHWA's fulfillment of all their legal duties,
6 as alleged in this pleading.
7

8 6. Plaintiff has no plain, speedy, adequate remedy in the ordinary course
9 of law since Plaintiff, its members, and other members of the public will suffer
10 irreparable harm as a result of defendants' violations of NEPA, the APA, CEQA,
11 the PRA, and other laws. Defendants' processing and approvals of the project
12 also rest on the failure to satisfy a clear, present, ministerial duty to act in
13 accordance with those laws. Even when defendants are permitted or required by
14 law to exercise their discretion in approving projects under those laws, they
15 remain under a clear, present, ministerial duty to exercise their discretion within
16 the limits of and in a manner consistent with those laws. Defendants have had
17 and continue to have the capacity and ability to process and approve the project
18 within the limits of and in a manner consistent with those laws, but defendants
19 have failed and refuse to do so and have exercised their discretion beyond the
20 limits of and in a manner inconsistent with those laws.
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24 7. Defendant Caltrans is a department of the State of California Business,
25 Housing and Transportation Agency, is duly organized under the laws of the
26 State, and is the lead agency under CEQA for the project.
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1 8. Defendant Federal Highway Administration (FHWA) is an agency of the
2 United States Department of Transportation, is duly organized under the laws of
3 the United States, and is the lead agency under NEPA for the project.

4 9. Does 1 through 10 are sued under fictitious names. Their true names
5 and capacities are unknown to plaintiffs. When true names and capacities are
6 ascertained, plaintiffs will amend this petition to assert them. Plaintiffs are
7 informed and believe that each of the fictitiously named defendants is responsible
8 in some manner for the occurrences herein alleged, and that the damages as
9 herein alleged were proximately caused by their conduct.
10

11 **IV. GENERAL ALLEGATIONS**

12
13 10. Plaintiff fully incorporates herein by reference paragraphs 1 through 9,
14 above.

15 11. In July 2004, Caltrans and the FHWA released a joint "Initial Study
16 (CEQA)/Environmental Assessment (NEPA)" (IS/EA). The IS/EA does not
17 discuss the Graton Rancheria Casino and Hotel Project, an approximately
18 762,000 square foot gaming and entertainment facility in the project vicinity
19 proposed by the Federated Indians of Graton Rancheria to be developed and
20 managed by Station Casinos, Inc. (proposed casino).
21

22
23 12. In June 2005, Caltrans and the FHWA released another joint IS/EA
24 which also does not discuss the proposed casino.

25 13. On July 6, 2005, Caltrans filed a Notice of Determination (NOD) for the
26 project with the State of California Office of Planning and Research
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1 Clearinghouse, clearinghouse no. 2004072103. The NOD states that Caltrans
2 approved the project on June 29, 2005 based on a Negative Declaration.

3 14. However, in November 2006, Caltrans and FHWA published a joint
4 "Negative Declaration/Initial Study (CEQA) Environmental Assessment/Finding of
5 No Significant Impact (NEPA)." The Neg Dec/FONSI does not discuss the
6 proposed casino.
7

8 15. On April 19, 2007, plaintiff wrote to Caltrans, following up on a phone
9 message, requesting, among other things, notification in writing of any hearings,
10 approvals, or resolutions regarding the project that followed the publication of the
11 Neg Dec/FONSI. Plaintiff received no response to that letter.
12

13 16. On May 1, 2007, plaintiffs submitted a California Public Records Act
14 request to Caltrans in which it requested, among other things, all notices issued
15 by Caltrans to comply with CEQA or with any other law governing the processing
16 and approval of the project including but not limited to NODs.
17

18 17. Caltrans' initially responded to the PRA request on or about June 5,
19 2007 and a representative of plaintiff inspected the documents and chose all of
20 the provided documents for copying on June 6, 2007.
21

22 18. On June 19, 2007, plaintiff was notified that the documents were ready
23 to be picked up. Plaintiff also was notified that further documents responsive to
24 the PRA request had been identified and were ready for inspection by plaintiff.
25

26 19. Plaintiff picked up the first batch of documents on June 27, 2007, and
27 on June 28, 2007 reviewed and chose all documents from the additional batch to
28 be copied.

1 20. On July 10, 2007, Caltrans informed the representative that the second
2 batch was ready for pick up and the representative picked up those documents on
3 July 11, 2007. Neither batch of documents contained any documentation,
4 including any NODs, relative to any agency approval of the project .

5 21. Therefore, on July 31, 2007 plaintiff informed Caltrans in writing that its
6 response to the PRA did not include any documentation relative to Caltrans'
7 approval of the project and to "please confirm that there exists no documentation
8 indicating Caltrans' approval of this project."

9 22. Also on July 31, 2007, plaintiff wrote Caltrans again requesting whether
10 or not Caltrans approved the project.
11

12 23. Caltrans responded on August 14, 2007, that "[t]he Department has
13 approved the Wilfred Avenue Interchange Project consistent with applicable
14 environmental laws and Departmental practices, policies and procedures.
15 Furthermore, all responsive documents regarding the Wilfred Avenue Interchange
16 Project, including those relating to project approval, which were not subject to
17 statutory exemptions or privileges, have been identified and made available at the
18 Department's Oakland, California office for your client's review on the designated
19 dates and times. Although the Department has conducted a complete and
20 thorough search, in the event that the Department locates any additional,
21 non-exempt, nonprivileged responsive documents, the Department will notify you
22 immediately."
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1 24. Although NODs are not exempt or privileged documents, Caltrans
2 never provided plaintiff with any copies of any NODs in response to plaintiff's PRA
3 request.

4 25. On August 29, 2007, plaintiff happened to discover a listing on the
5 State of California Office of Planning and Research Clearinghouse website that
6 shows that ostensibly on June 18, 2007, Caltrans filed another Notice of
7 Determination (NOD) for the project, clearinghouse no. 2004072103. This NOD
8 states that Caltrans approved the project on June 7, 2007 based on a Negative
9 Declaration.
10

11 26. Caltrans did not send plaintiff notification in writing of any hearing
12 relative to this alleged approval nor of the alleged approval itself, pursuant to
13 plaintiff's letter dated April 19, 2007.
14

15 27. Plaintiff alleges on information and belief that the FHWA has approved
16 the project.
17

18 28. This petition is timely filed on August 31, 2007.

19 29. Plaintiff has no plain, speedy, and adequate remedy in the ordinary
20 course of law. If the approvals remain in place, the construction of the project will
21 proceed with immediate, severe, and irreparable harm to the environment, to
22 plaintiff, and to Sonoma County and State of California residents due to
23 environmental degradation and the failure of Caltrans and the DOT and the
24 FHWA to follow the law in its approval process. Caltrans and the DOT and the
25 FHWA have the capacity to correct its violations of law but has failed and refused
26 to do so.
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**V. CAUSE OF ACTION FOR VIOLATIONS OF NEPA AND THE APA
(against the DOT and the FHWA)**

30. Plaintiff fully incorporates herein by reference paragraphs 10 through 29, above.

31. NEPA requires every federal agency to prepare an environmental impact statement ("EIS") for every major action significantly affecting the quality of the human environment that the agency proposes to approve or carry out.

32. The DOT and the FHWA have not prepared an EIS for the project. The project, however, is a major action proposed to be approved and carried out by at least one federal agency and has the potential to affect the quality of the human environment, including but not limited to the environment in Rohnert Park and Southern Sonoma County. Such environmental impacts are in the areas of, among other things, traffic, air quality, noise, biological resources, hazards and hazardous materials, water quality, land use and planning, public services, cumulative impacts, and public safety, due to, among other things, the proposed casino.

33. The DOT's and the FHWA's refusal to prepare an EIS for the project is contrary to NEPA, arbitrary and capricious under the APA, a prejudicial abuse of discretion, and otherwise not in accordance with the law and/or were without observance of procedures as required by law.

34. Further, under certain circumstances, NEPA requires every federal agency to recirculate or prepare a supplemental environmental impact statement ("SEIS"), i.e., a statement that supplements a previously prepared EIS, for every major action significantly affecting the quality of the human environment that the

1 agency proposes to approve or carry out. In particular, recirculation must occur or
2 an SEIS must be prepared when (i) the agency makes substantial changes in the
3 proposed action that are relevant to environmental concerns or (ii) there are
4 significant new circumstances or information relevant to environmental concerns
5 and bearing on the proposed action or its impacts. Additionally, every federal
6 agency must (i) adopt procedures for introducing an SEIS into its formal
7 administrative record (if there is one) for the proposed action and (ii) prepare,
8 circulate, and file an SEIS in the same manner as a draft or final EIS unless
9 alternative procedures have been approved by the Council on Environmental
10 Quality.
11

12
13 35. The DOT and the FHWA have not recirculated or prepared an SEIS for
14 the project and opted instead to rely on the FONSI. However, there are significant
15 new circumstances and/or information relevant to environmental concerns over
16 and bearing on the project and its environmental impacts including but not limited
17 to impacts in the areas of, among other things, traffic, air quality, noise, biological
18 resources, hazards and hazardous materials, water quality, land use and
19 planning, public services, cumulative impacts, and public safety, due to, among
20 other things, the proposed casino.
21

22
23 36. The DOT's and the FHWA's refusal to recirculate or prepare an SEIS
24 for the project is contrary to NEPA, arbitrary and capricious under the APA, a
25 prejudicial abuse of discretion, and otherwise not in accordance with the law
26 and/or were without observance of procedures as required by law.
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1 37. Plaintiff, its members, and other members of the public have been
2 harmed as a result of the DOT's and the FHWA's violations of NEPA and the APA
3 because they have been denied the benefits and protections provided by
4 compliance with those laws. By way of example and without limitation, plaintiff, its
5 members, the public, and the decision-makers who approved and are carrying out
6 the project were not fully informed about the project prior to the decision to
7 approve and carry out the project.
8

9 **VI. CAUSE OF ACTION FOR VIOLATIONS OF CEQA**
10 **(against Caltrans)**

11 38. Plaintiff fully incorporates herein by reference paragraphs 30 through
12 37, above.
13

14 39. Caltrans abused its discretion and failed to act in the manner required
15 by law by failing to recirculate based on significant new information pursuant to
16 section 15088.5 of the CEQA Guidelines (14 Cal. Code Regs.) or require
17 subsequent or supplemental environmental review pursuant to section 15162 or
18 section 15163 of the Guidelines based on significant new information or
19 substantial changes to the project circumstances including but not limited to the
20 proposed casino. Such changes implicate, among other things, environmental
21 impacts in the areas of traffic, air quality, noise, biological resources, hazards and
22 hazardous materials, water quality, land use and planning, public services,
23 cumulative impacts, public safety, and mandatory findings of significance.
24
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26 40. Caltrans abused its discretion and failed to act in the manner required
27 by law by failing to notify plaintiff of any hearings, approvals, or resolutions
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1 regarding the project that followed the publication of the Neg Dec/FONSI, despite
2 plaintiff's explicit and repeated written and oral requests.

3 **VII. CAUSE OF ACTION FOR VIOLATIONS OF THE PRA**
4 **(against Caltrans)**

5 41. Plaintiff fully incorporates herein by reference paragraphs 38 through
6 40, above.

7 42. Caltrans abused its discretion and failed to act in the manner required
8 by law by improperly and without justification withholding certain non-exempt and
9 non-privileged public records from plaintiff and plaintiff's members and
10 representatives, who are members of the public, thereby causing plaintiff great
11 harm.
12

13 **WHEREFORE**, plaintiff prays:

14 1. That the Court issue a Peremptory Writ of Mandate ordering defendants
15 to set aside their respective actions and any approvals in furtherance of the
16 project and to comply with NEPA, the APA, CEQA, the PRA, and other applicable
17 laws prior to further consideration the project;
18

19 2. For declaratory relief against the DOT and the FHWA establishing that
20 the FHWA must recirculate or prepare an EIS or a supplement to the FONSI
21 pursuant to NEPA and the APA;
22

23 3. That, upon necessity and the filing of a request, the Court issue a stay
24 of the administrative approvals and/or a temporary restraining order and
25 preliminary injunction enjoining defendants and their subcontractors, agents,
26 employees, heirs, assigns, or representatives from engaging in any physical
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1 activity connected with the approvals or the project while this petition is
2 pending;

3 4. That the Court issue a permanent injunction enjoining defendants and
4 their subcontractors, agents, employees, heirs, assigns, or representatives from
5 engaging in any activity connected with the approvals or the project unless and
6 until this Court finds that the approvals are in full compliance with NEPA, the APA,
7 CEQA, the PRA, and all other applicable laws;

9 5. Any and all other relief that may be authorized by NEPA, the APA,
10 CEQA, the PRA or any other applicable law but not explicitly or specifically
11 requested elsewhere in this complaint or prayer;

12 6. For costs of suit and attorney's fees herein pursuant to section 1021.5 of
13 the California Code of Civil Procedure and/or the Equal Access to Justice Act, 28
14 U.S.C. §§ 2412(b), (d), and/or section 6259(d) of the California Government Code
15 or pursuant to any other applicable law.
16

17 7. For other and further relief as the court may deem proper.
18

19 Dated: August 31, 2007

Law Office of Rose M. Zoia

20
21 _____/s/_____
22 Rose M. Zoia (as authorized on 08/31/07)
23 Attorney for Plaintiff
24
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VERIFICATION

I am a member of Plaintiff Rohnert Park Citizens to Enforce CEQA. I have read the Complaint for Declaratory, Mandamus, and Injunctive Relief for Violations of the National Environmental Policy Act, Administrative Procedure Act, the California Environmental Quality Act, and the California Public Records Act and know its contents. The matters stated in it are true and correct based on my knowledge, except as to the matters which are stated therein on information and belief and as to those matters, I believe them to be true.

I declare under penalty of perjury that the above is true and correct.

Executed this 31st day of August 2007, at Santa Rosa, California.

_____/s/_____
Linda Long (as authorized on 08/31/07)

PROOF OF SERVICE

I am a citizen of the United States and a resident of the County of Sonoma. I am over the age of eighteen years and not a party to the within entitled action. My business address is 50 Old Courthouse Square, Suite 600, Santa Rosa, California 95404.

On August 31, 2007, I served one true copy of COMPLAINT FOR DECLARATORY, MANDAMUS, AND INJUNCTIVE RELIEF FOR VIOLATIONS OF THE NATIONAL ENVIRONMENTAL POLICY ACT, ADMINISTRATIVE PROCEDURE ACT, THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, AND THE CALIFORNIA PUBLIC RECORDS ACT by mailing via U.S. Postal Service, first-class, certified mail, postage pre-paid, to the entities and addresses listed below:

U.S. Attorney's Office
Northern District of California
450 Golden Gate Avenue
11th Floor
San Francisco, CA 94102
Defendants United States Department of Transportation, Federal Highway Administration

U.S. Department of Justice
Environment and Natural Resources Division
Law and Policy Section
P.O. Box 4390
Ben Franklin Station
Washington, DC 20044-4390
Defendants United States Department of Transportation, Federal Highway Administration

United States Attorney's Office
1301 Clay Street
Suite 340S
Oakland, CA 94612
Defendants United States Department of Transportation, Federal Highway Administration

Attorney General of the United States U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001
Defendants United States Department of Transportation, Federal Highway Administration

Caltrans District 4
P.O. Box 23660
Oakland, CA 94623-0660

and by mailing via U.S. Postal Service, first-class, pre-paid postage, to the persons or entities and addresses listed below:

State of California
Office of the Attorney General
1300 "I" Street
P.O. Box 944255
Sacramento, CA 94244-2550
Defendant California Department of Transportation

Sally Magnani Knox
Deputy Attorney General
State of California
Department of Justice
P. O. Box 944255
Sacramento CA 94244-2550
California Attorney General

State of California
Office of the Attorney General
455 Golden Gate
Suite 11000
San Francisco, CA 94102-7004
Defendant California Department of Transportation

I declare under penalty of perjury that the foregoing is true and correct. Executed on August 31, 2007, at Santa Rosa, California.

/s/

Rose M. Zoia (as authorized on 08/31/07)